

Deposition of Parrish Fortenberry

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<p>IN THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI</p> <p>IN RE: JON CHRISTOPHER EVANS Case No. 09-03763-NPO AND JOINTLY ADMINISTERED RELATED CASES DEBTORS. Chapter 7 ***** G&B INVESTMENTS, INC. PLAINTIFF V. ADV. PROC. NO. 10-00040-NPO DEREK A. HENDERSON, TRUSTEE FOR THE BANKRUPTCY ESTATE OF JON CHRISTOPHER EVANS, ET AL. DEFENDANTS *****</p> <p>30(b)(6) DEPOSITION OF MISSISSIPPI VALLEY TITLE INSURANCE COMPANY, THROUGH ITS REPRESENTATIVE, PARRISH FORTENBERRY Taken at the offices of Adams and Reese, 111 Capitol Street, Suite 350, Jackson, Mississippi, on Friday, November 19, 2010, beginning at approximately 9:00 a.m.</p> <p>*****</p> <p>APPEARANCES NOTED HEREIN</p> <p>CHRISTY R. SIEVERT, CSR, RPR PROFESSIONAL COURT REPORTING, LLC Registered Professional Reporter Certified Shorthand Reporter Mississippi CSR No. 1421 Post Office Box 320923 Jackson, Mississippi 39232-0928 www.procourtreporting.com</p>	<p>1 (Continued:) 2 COUNSEL FOR G&B INVESTMENTS, INC.: 3 MR. MICHAEL CORY MR. DALE DANKS, JR. 4 Danks, Miller & Cory 213 South Lamar Street 5 Jackson, Mississippi 39201 6 COUNSEL FOR HERITAGE BANK: 7 MR. MICHAEL SIMMONS Cosmich, Simmons & Brown 8 The Plaza Building 120 North Congress Street, Suite 400 9 Jackson, Mississippi 39201</p> <p>10 ALSO PRESENT: 11 DONALD JOSEPH BRATA</p>
<p>1 APPEARANCES</p> <p>2</p> <p>3 COUNSEL FOR MISSISSIPPI VALLEY TITLE INSURANCE and OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY: 4 MR. POWELL G. OGLETREE, JR. MR. M. SCOTT JONES 5 Adams and Reese, LLP 111 East Capitol Street, Suite 350 6 Jackson, Mississippi 39201 7 MR. DAVID CLARK MR. ROB DODSON 8 Bradley, Arant, Boulton & Cummings Post Office Box 1789 9 Jackson, Mississippi 39215</p> <p>10 COUNSEL FOR BANK OF FOREST: 11</p> <p>12 MR. WILLIAM LISTON, III Liston & Lancaster 13 2648 Ridgewood Road, Suite B Jackson, Mississippi 39216 14 MR. W. LAWRENCE DEAS Deas & Deas 15 Post Office Box 7282 Tupelo, Mississippi 38802</p> <p>16 COUNSEL FOR MERCHANTS & FARMERS BANK: 17</p> <p>18 MR. JEFF D. RAWLINGS Rawlings & MacInnis 19 1296 Highway 51 Madison, Mississippi 39110</p> <p>20 COUNSEL FOR CHARLES EVANS: 21</p> <p>22 MR. TERRY R. LEVY Daniel, Coker, Horton & Bell 23 4400 Old Canton Road, Suite 400 Jackson, Mississippi 39211</p> <p>24</p> <p>25</p>	<p>1 TABLE OF CONTENTS PAGE</p> <p>2</p> <p>3 Title Page..... 1 4 Appearance Page..... 2 5 Table of Contents..... 3 6 Exhibit Page..... 4 7 Stipulation Page..... 5</p> <p>8 DEPOSITION OF PARRISH FORTENBERRY:</p> <p>9</p> <p>10 By Mr. Liston..... 6 By Mr. Cory..... 167 By Mr. Rawlings..... 190</p> <p>11</p> <p>12 Signature Page..... 199</p> <p>13</p> <p>14 Certificate Page..... 200</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>



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<p>1 agents and goes out and visiting them. And if 2 people apply to become an agent or an approved 3 attorney, he talks with them. 4 Brad Jones handles claims. Then 5 you've got Carolyn Freeman, who does the issuance 6 of policies out of the home office in -- for 7 property in Mississippi. That's primarily -- 8 although, I do some myself. 9 Q. Now, is it fair to describe Carolyn's 10 area as underwriting? 11 A. Yeah. I mean, that's kind of what it 12 is. It's -- you know, if you go back to historic, 13 since we've been in business so long, you sort of 14 have more people that did that before computers 15 were developed. So there were more people. It's 16 now devolved down to it's Carolyn and an 17 assistant. 18 Q. Got you. Sorry to interrupt. 19 A. No, no problem. 20 The you've got several counsel. 21 Morton Matrick is vice president and -- I'm sorry, 22 executive vice president and underwriting counsel, 23 who answers underwriting questions from either -- 24 from Carolyn or just from agents or attorneys that 25 call. You've got me. And then you've got Mark</p>	<p>1 What do you know about -- or what did 2 you know about Charles Evans before September 1st 3 of 2009? 4 A. Personally, I didn't know him. As 5 far as the company goes, he had been -- he was on 6 our approved attorney list. 7 Q. Okay. Had you heard that name before 8 September 1, 2009? 9 A. Personally, yes. 10 Q. Just from, what, working at Valley? 11 A. Working at Valley. 12 Q. Did you -- were you cognizant of what 13 his role was with Valley, if any? 14 A. No. 15 Q. Okay. Did you know whether or not he 16 was an approved attorney or an agent or anything? 17 A. No, I didn't have any reason to. He, 18 like a number of people, would come and pick up 19 policies or -- you know, that walks by my office, 20 so I knew his face. 21 Q. Have you had an occasion -- I guess 22 you probably have -- to study any documents about 23 his relationship with Valley? 24 A. Yes. 25 Q. Okay. Over in the room of massive</p>
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<p>1 Higdon who is the executive vice president, COO, 2 secretary and treasurer, who does general 3 oversight of the different individuals. And the 4 president is Mike Sellari. 5 And that's just -- that's -- just to 6 be clear, that's the Mississippi office. We have 7 offices in Alabama and Tennessee as well. 8 MR. LISTON, CONTINUED: 9 Q. Did you know John Cossar? 10 A. Yeah. 11 Q. What was John's position with -- I 12 assume he is no longer with the company? Or he's 13 retired or... 14 A. He's more or less retired. He's 15 chairman emeritus. He was the chairman and 16 president. 17 Q. What was his job, chairman and 18 president? 19 A. Uh-huh (affirmative response.) 20 Q. So he was in Mr. Sellari's position 21 when he was here? 22 A. Right. In the present position, 23 Mr. Sellari isn't chairman. Rande Yeager is 24 chairman. 25 Q. I understand.</p>	<p>1 documents, there's some things that I found I want 2 to ask you about. 3 A. Okay. 4 Q. I think this is Exhibit 15 to 5 Ms. Freeman's deposition. Would you see if you 6 can find that, please, sir. It's going to be 7 toward the end. 8 Have you ever met Charles Evans? 9 A. No. 10 Q. Okay. Did you know anything before 11 September 1, 2009, about Chris Evans? 12 A. No. Personally, no. 13 Q. Or that they were brothers? 14 A. I personally, no. 15 Q. Okay. Have you made an inquiry 16 within the company to determine if anyone there 17 knew about Charles having a brother named Chris 18 and whether Chris owned, directly or indirectly, 19 any interest in entities to which insurance was 20 issued? 21 A. Yes, I have. And prior to that time, 22 no one has any specific recollection that he was 23 the brother. 24 Q. Okay. Did anyone recognize the name 25 Chris Evans or Jon C. Evans when you made that</p>

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<p>1 inquiry?</p> <p>2 A. Well, I mean, my inquiry was after</p> <p>3 September 2009, so, I mean, obviously, they did.</p> <p>4 As far as whether or not it was from before that</p> <p>5 or not, nobody has --</p> <p>6 Q. You don't know?</p> <p>7 A. I don't know.</p> <p>8 Q. Take a look at this Exhibit 15.</p> <p>9 A. Okay.</p> <p>10 Q. And I'm not going to represent to you</p> <p>11 that this is a complete copy of a file pertaining</p> <p>12 to Charles Evans, but I will represent to you that</p> <p>13 all of these documents came from that file. Okay?</p> <p>14 A. Okay.</p> <p>15 Q. And they do bear MVT Bates numbers.</p> <p>16 A. Okay.</p> <p>17 MR. LISTON: I raised this question</p> <p>18 yesterday with you, Scott. Can we stipulate that</p> <p>19 anything that has a MVT Bates number on it is</p> <p>20 authentic, or, I mean, is a correct copy of the</p> <p>21 original?</p> <p>22 MR. JONES: And the only reason I'm</p> <p>23 going to -- if it is a Valley Title document that</p> <p>24 we don't dispute, we will stipulate to that. But</p> <p>25 the reason I hesitate on that is because we have</p>	<p>1 to a particular page in Exhibit 15 to Ms. Freeman's</p> <p>2 deposition.</p> <p>3 A. Okay.</p> <p>4 Q. Are all these documents, to your</p> <p>5 knowledge, from a file that Valley maintained on</p> <p>6 Charles Evans?</p> <p>7 A. They appear to be, yes.</p> <p>8 Q. Okay. And were these documents</p> <p>9 created by Valley?</p> <p>10 A. They appear to be.</p> <p>11 Q. The first thing here, it says,</p> <p>12 "Application For Approved Attorney List," and it's</p> <p>13 back in April 11, 1984.</p> <p>14 A. Yes.</p> <p>15 Q. Did you find anybody from the company</p> <p>16 that -- in any inquiry you made that was working</p> <p>17 back in 1984 that was involved with Mr. Evans'</p> <p>18 application at that time?</p> <p>19 A. Nobody had any specific recollection</p> <p>20 of the application at that time.</p> <p>21 Q. Okay. Is it the company's practice</p> <p>22 to check with the people that the attorney lists</p> <p>23 as references?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. Take a look at the bottom of</p>
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<p>1 obtained a lot of documents in this case, and a</p> <p>2 lot of those documents came from other people that</p> <p>3 might bear our Bates number, and we certainly</p> <p>4 can't stipulate that that's a true and correct</p> <p>5 copy.</p> <p>6 But I believe the documents you're</p> <p>7 referring to in Exhibit 15 are documents that came</p> <p>8 from the approved attorney file. It's not a</p> <p>9 complete copy of that file, but I think --</p> <p>10 Do you agree?</p> <p>11 THE WITNESS: Yeah.</p> <p>12 MR. JONES: -- we can stipulate that</p> <p>13 the documents that -- the collection of documents</p> <p>14 that you have produced as Exhibit 15 to</p> <p>15 Ms. Freeman's deposition, we can stipulate these</p> <p>16 are true and correct.</p> <p>17 MR. LISTON: Okay. I just wrote</p> <p>18 myself a note to try to cover this issue at the</p> <p>19 end of the depo and do it globally. So maybe I'll</p> <p>20 remember to do it today.</p> <p>21 MR. LISTON, CONTINUED:</p> <p>22 Q. Let's take a look at this.</p> <p>23 A. Okay.</p> <p>24 Q. These are in order. I'm not going to</p> <p>25 say the Bates number unless I want to direct you</p>	<p>1 this page. I think the last person he listed is a</p> <p>2 Jon Christopher Evans.</p> <p>3 A. Yes.</p> <p>4 Q. Do you know whether or not anyone</p> <p>5 from the company checked with Jon Christopher</p> <p>6 Evans, who was listed as a reference for Charles</p> <p>7 Evans?</p> <p>8 A. I don't know.</p> <p>9 Q. The next page of this exhibit, it</p> <p>10 looks like this application was approved, and he</p> <p>11 was accepted as an approved attorney about May 1,</p> <p>12 1984.</p> <p>13 A. Yes.</p> <p>14 Q. Now, he was assigned a number on this</p> <p>15 page, 525294?</p> <p>16 A. Yes.</p> <p>17 Q. What's the significance of that</p> <p>18 number?</p> <p>19 A. Well, it was just a designation to</p> <p>20 keep up -- try to keep up with who was who.</p> <p>21 Q. I have seen -- you were in here</p> <p>22 yesterday?</p> <p>23 A. Yes.</p> <p>24 Q. And you were --</p> <p>25 A. For part of the day.</p>

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<p>1 A. Nobody has any recollection of any 2 particular problem. Usually, there would be 3 something if there had been a particular problem. 4 People come on and off the list every year. We 5 ask approved attorneys and agents to submit 6 their -- a copy of their E&O. 7 He either was -- decided not to get 8 out -- as far as just generally what happens, he 9 either decided he didn't want to do real estate 10 anymore and just didn't submit his E&O, or just 11 decided, whatever, he didn't want to be on the 12 list, so he would have gone off the list. 13 Q. So for whatever reason, he decides he 14 wants to be back on the list? 15 A. Yes. 16 Q. And he reapplies in 2002? 17 A. Yes. 18 Q. And, again, Valley asks for him a 19 list of personal and professional references? 20 A. Yes. 21 Q. And, again, he lists Chris Evans down 22 there for a reference? 23 A. Yes. 24 Q. You're aware that that's his brother, 25 of course?</p>	<p>1 A. Yes. 2 Q. And all of them, I think, people 3 write "no comment," "no comment," "no comment"? 4 A. Right. 5 Q. I take it, since he was approved in 6 2002, "no comment" was good? 7 A. Yes. Yeah. 8 Q. Had there been a comment -- 9 A. Right. 10 Q. -- he might not have been approved? 11 A. Right. Well -- right. 12 Q. Unless it was a glowing comment? 13 A. Right. Yeah. 14 Q. All right. 15 A. We get a lot of these that go 16 through, and we just -- if there's something to 17 say, we would go and tell them. Otherwise, we 18 just say "no comment" if there's nothing we know. 19 Q. There is a page in here that at the 20 bottom is Bates 201. 21 A. Okay. 22 Q. And I think this is a February 1, 23 2002, letter to Thomas J. Lowe, Jr. -- 24 A. Yes. 25 Q. -- from Valley?</p>
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<p>1 A. I am now. 2 Q. Did anyone from Valley check with 3 Chris Evans? 4 A. I don't believe so. I'm not sure if 5 you have the reference letters that were in here. 6 Yeah, you do. There wasn't a ref- -- 7 MR. JONES: It doesn't have all of 8 them. 9 THE WITNESS: It doesn't have all of 10 them. 11 We send -- when we check with people, 12 we send reference letters out. We may ask other 13 people, too, that we don't send reference letters 14 to, but -- so we at least sent it to those, and we 15 didn't send a reference letter to Chris. 16 MR. LISTON, CONTINUED: 17 Q. Okay. The next several pages of 18 documents in this exhibit are in-house review 19 sheets? 20 A. Yes. 21 Q. It looks like they're sent to some of 22 the different people you mentioned -- 23 A. Yes. 24 Q. -- when you were describing the 25 company?</p>	<p>1 A. Yes. 2 Q. And this is one of the letters that 3 Valley would have sent out to the references 4 listed on the 2002 application, right? 5 A. Yes. Yes. 6 Q. And I notice down here that the No. 4 7 question presented to Mr. Lowe was, "Do you feel 8 that we would be safe in accepting his/her 9 opinions on land titles?" 10 A. Yes. 11 Q. What's the necessity of asking a 12 question like that? 13 A. Because if we're going to be issuing 14 title insurance policies and commitments on it, we 15 don't want to have a lot of claims, so we want to 16 make sure that they're experienced in real estate 17 so that we can safely issue and not get a lot of 18 claims. 19 Q. I mean, it's pretty self-explanatory, 20 but, in fact, when somebody is an approved 21 attorney and they submit a title certification to 22 Valley -- right? 23 A. Uh-huh (affirmative response). 24 Q. -- Valley is literally accepting what 25 they say as to the certification of the title?</p>

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<p>1 A. Yeah, we're relying on their 2 certification, yes. 3 Q. Because Valley, as I understand it, 4 don't go behind those lawyers? 5 A. Correct. 6 Q. Doesn't recheck their title work and 7 doesn't -- hasn't formed its own conclusion 8 whether or not that certification is, in fact, 9 accurate? 10 A. Right. We're relying on them as -- 11 Q. Completely relying, right? 12 A. Yes. As licensed attorneys. 13 Q. Skip over two pages, please, sir. 14 A. Okay. 15 Q. For the next several pages in here, 16 maybe even more than several, what appears are 17 copies of, for lack of better words, declaration 18 pages from Mr. Evans' insurance. 19 A. Okay. 20 Q. E&O insurance, right? 21 A. Yes. Yes. 22 Q. And certificates of liability 23 insurance? 24 A. Yes. 25 Q. That Valley obviously obtained</p>	<p>1 A. Okay. 2 Q. Now, this is a letter dated 3 September 25, 2009, to Hancock Bank about 4 Mr. Evans from Mark Higdon, executive vice 5 president of Valley? 6 A. Yes. 7 Q. I assume multiple letters of this 8 nature were sent out to different banks and/or 9 others around the time that Valley realized that 10 Mr. Evans' work was not legitimate? 11 A. We sent -- 12 MR. JONES: Object to the form on 13 that one. 14 THE WITNESS: We sent out to anyone 15 who had received a closing protection letter from 16 us, we sent this letter to them. 17 MR. LISTON, CONTINUED: 18 Q. Okay. Well, the necessity of sending 19 out this letter was what? Let me ask it that way. 20 A. Well, because a closing protection 21 letter is open-ended, so it doesn't have a date. 22 It says until you are otherwise notified. So if a 23 bank was relying on that closing protection 24 letter, we wanted to let them know not to rely on 25 the closing protection letter.</p>
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<p>1 because at the bottom it says "Mississippi Valley 2 Title"? 3 A. Right. 4 Q. And that goes on for a long time. 5 And I think what we have here in this exhibit is 6 from year 2003 all the way up to sometime in 2009. 7 A. Okay. 8 Q. Now, does Valley obtain these kind of 9 documents because it wants to assure itself that 10 the approved attorney is insured in case that 11 approved attorney is negligent in certifying the 12 title? 13 A. Yes. 14 Q. Because Valley's having to rely 15 solely on that approved attorney for the validity 16 and accuracy of the title work? 17 A. Correct. 18 Q. Okay. And in the event an approved 19 attorney was negligent in certifying a title, then 20 Valley recognizes that that might expose Valley to 21 liability, not to that approved attorney but to 22 Valley's insured? 23 A. Correct. 24 Q. Take a look, please, sir, to the next 25 to the last page.</p>	<p>1 Q. Okay. I have not seen a closing 2 protection letter. 3 A. Okay. 4 Q. I don't know if it was produced 5 because it would be like finding a needle in a 6 haystack. 7 A. It has been produced. 8 Q. Maybe I need to figure out the Bates 9 number of it or something. Tell me what a closing 10 protection letter is and what it says. 11 MR. JONES: I'm just going to object. 12 I'll let him answer the question, but he's not 13 designated for defining what those terms are or 14 what commitments are or what policies are. 15 MR. LISTON: I understand. But I 16 assure you, he has more knowledge of that than I 17 do, and that's why I'm asking. 18 THE WITNESS: It's an agreement to 19 indemnify under the terms and conditions that are 20 stated in the closing protection letter for 21 certain events. 22 MR. LISTON, CONTINUED: 23 Q. Okay. An agreement by whom to 24 indemnify whom? 25 A. Mississippi Valley to indemnify the</p>

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<p>1 speak to closing protection letters? 2 MR. JONES: Yes. 3 MR. LISTON: I'll take you at your 4 word. Okay. We'll move one. 5 MR. LISTON, CONTINUED: 6 Q. Now you're back -- 7 A. Okay. 8 Q. -- speaking on behalf of Valley. 9 A. Okay. Sure. 10 Q. The last letter we were looking at in 11 this exhibit, the September 25, '09 letter to 12 Hancock Bank, in essence, this letter revokes 13 whatever representation or promise was contained 14 in that closing protection letter that was sent to 15 Hancock Bank? 16 A. Right. Well, can I -- actually, let 17 me be clear about -- 18 Q. Sure. 19 A. -- what I mean by revoked. If 20 they've already taken action in reliance on it, 21 then that's not. It's a matter of for future 22 notice, not to take further actions. 23 Q. I understand. It's just withdrawing 24 the letter? 25 A. Right. Yeah.</p>	<p>1 of reasons. One of which is there are attorneys 2 that think since they're representing the bank, 3 getting title insurance, that they don't want a 4 conflict that it may -- they want to get the best 5 protection. They may try to negotiate a lower 6 rate than the standard rates. 7 There are other issues that if they 8 don't do enough real estate work, they don't 9 really justify the expenses associated with a 10 title insurance agent, so underwriters may not be 11 willing to put them on the list. But if they want 12 to practice real estate, typically, a requirement 13 from a bank is to get them title insurance. So 14 they need to have a source for title insurance, 15 and they could -- you know, if they like doing 16 title work, their own title searches, they do get 17 paid by their clients for the title search. 18 Q. So the benefit to the lawyer who 19 wants to become an approved attorney is what? I'm 20 trying to boil down what you just said to 21 something. 22 MR. JONES: Object to the form. 23 THE WITNESS: Because -- well, the -- 24 as part of the closing, if they're doing real 25 estate, and somebody asks them for title</p>
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<p>1 Q. That's what I was trying to find out. 2 Was Evans ever paid any compensation, 3 remuneration, commission, salary, fee, anything 4 for causing Valley to issue any title commitments 5 or causing Valley to issue any title policies? 6 MR. JONES: Object to the form. I'm 7 not sure it changes the answer, but which Evans 8 are we talking about? 9 MR. LISTON: Oh. The lawyer Evans. 10 THE WITNESS: Charles? 11 MR. JONES: They're both lawyers. 12 THE WITNESS: Well -- for Charles, 13 no. 14 MR. LISTON, CONTINUED: 15 Q. Right. Now, I'm trying to understand 16 this -- and maybe it's just because I don't work 17 in this area of the law. What's the incentive for 18 a lawyer to do whatever is required with Valley to 19 become an approved attorney and meet Valley's 20 standards in that regard if he's not receiving any 21 compensation for that from Valley? 22 MR. JONES: Object to the form. 23 MR. LISTON, CONTINUED: 24 Q. Can you explain that to me? 25 A. There are -- I mean, there's a number</p>	<p>1 insurance, just like if it's somebody asked for a 2 termite certificate, they've got to call someone 3 to get it. And they're not going to get it from 4 our -- at least from the home office. If they're 5 not on a list from us, they can call somebody 6 else. I'm not sure if you have to be on anybody 7 else's list in order to get title insurance from 8 them. 9 MR. LISTON, CONTINUED: 10 Q. Right. Banks, from time to time at 11 least, want their transactions insured, right? 12 A. Yes. 13 Q. Want the title to property against 14 which they loan money insured? 15 A. Yes. 16 Q. So they want to deal with attorneys 17 who have the ability to procure that insurance for 18 them? 19 A. If they're not going to obtain it 20 directly, yes. 21 Q. Right. And a lawyer who is an 22 approved attorney can represent to the bank not 23 only can I do your closing work, but I also can 24 solve your concern about obtaining title insurance 25 for this transaction?</p>

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<p>1 MR. JONES: Object to the form. 2 THE WITNESS: You know, I don't know 3 what -- 4 MR. LISTON, CONTINUED: 5 Q. Maybe not solve it, but I have a 6 means and a relationship I can contact Valley, I 7 can submit the paperwork, and I can go -- you 8 know, I can be your intermediary to get this title 9 insurance issued. 10 A. Yeah. They -- 11 Q. Fair? 12 A. Yeah. They can call and ask on 13 their -- on the bank's behalf to get title 14 insurance. 15 Q. So the benefit to the lawyer may be 16 that it opens up areas of representation that 17 would not otherwise exist for that lawyer because 18 now he has at least some relationship with Valley 19 by which title insurance may result? 20 MR. JONES: Objection. 21 THE WITNESS: A representation as in 22 like an attorney representing a client, you mean? 23 MR. LISTON, CONTINUED: 24 Q. I don't remember what words I used. 25 A. Okay. Well -- okay. Lawrence says</p>	<p>1 MR. JONES: Object to the form; calls 2 for speculation. 3 THE WITNESS: I would assume it does. 4 And if the bank has any questions, they're 5 certainly capable of calling and asking if the 6 person is, and we'll tell them if they are. 7 MR. LISTON, CONTINUED: 8 Q. Right. And, in fact, the banks would 9 want the attorneys to tell them that, would they 10 not, because they'd want to know which attorneys 11 can do the work, send it to Valley, get the title 12 insurance issued, that they would like to have 13 before they go do the transaction? 14 MR. JONES: Object to the form; calls 15 for speculation. 16 THE WITNESS: The -- I've never 17 really seen any bank care where it's coming from, 18 the title insurance. It's typically that they can 19 obtain title insurance. So, I mean, about the 20 question of whether or not, you know, because it's 21 Valley, I don't know. 22 MR. LISTON, CONTINUED: 23 Q. Are there two kinds of title 24 insurance policies, roughly? Lender policies and 25 owner policies?</p>
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<p>1 yes. So, yeah. 2 Q. Okay. Now, are the approved 3 attorneys, as far as Valley is concerned, allowed 4 to market themselves to banks as approved 5 attorneys for Valley? 6 A. No. Well, we would not want them 7 to -- I mean, we don't control what they do or 8 what they say, so. . . If we found out they 9 were, we would take them off our list, typically. 10 Q. Well, the word "market" is a big 11 word. 12 A. Right. 13 Q. I don't mean publish things in the 14 newspaper. 15 A. Right. 16 Q. I don't mean put things on 17 television. What I mean is, if they see a banker 18 at lunch, can they say, Hey, you know, I happen to 19 be an approved attorney for Valley, and I'd be 20 happy to talk to you about any closing work, 21 property transaction work the bank may have? 22 A. I don't think we have any stated 23 rules one way or the other on that. 24 Q. Doesn't that, in fact, happen, 25 though?</p>	<p>1 A. Generally. And there are variations 2 of those. And you can't have leasehold owners 3 policies or lenders policies. 4 Q. How does Valley's business break down 5 in percentage of lender versus owner? 6 A. It would be -- we issue more lenders 7 policies than owners, but I'm not sure, though, 8 what that break would be. 9 MR. JONES: We've been going about an 10 hour. Do you want to take a break? 11 MR. LISTON: Yeah, sure. 12 (OFF THE RECORD.) 13 MR. LISTON, CONTINUED: 14 Q. I take it that it's Valley's position 15 that Mr. Charles Evans was not an agent of the 16 company? 17 A. Correct. 18 Q. At least not an express agent of the 19 company? 20 A. Correct. 21 MR. JONES: Object to the form. 22 MR. LISTON, CONTINUED: 23 Q. Okay. And that he was an approved 24 attorney for the company? 25 A. Yes.</p>

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<p>1 Q. Let me talk to you about the 2 company's procedures, if any, with regard to 3 supervision of approved attorneys. 4 A. Okay. 5 Q. Is there any? 6 A. No. 7 Q. Okay. Certainly, the company doesn't 8 check behind the work of the -- title work of the 9 approved attorney? 10 A. Correct. Yes. 11 Q. To determine whether or not each 12 individual certification of title is accurate? 13 A. Yes. 14 Q. Or is free from fraud? 15 A. Right. 16 Q. Right? The company, as I understand 17 it, doesn't even do any random/spot checking of 18 approved attorneys' certification work? 19 A. Right. 20 Q. Is there a reason for that? 21 A. Well, just relying on the attorney as 22 a member in good standing of the Bar. 23 Q. Okay. How much does the company 24 charge to do an abstract title? 25 A. It depends on the type of property.</p>	<p>1 MR. LISTON, CONTINUED: 2 Q. Right. Have you ever considered it? 3 Has it ever been discussed within the company 4 whether or not the company should, in some manner, 5 at least on a random basis, check the work of 6 approved attorneys, the title work, to make sure 7 it meets company standards? 8 A. Prior to the Evans stuff? 9 Q. Prior to September 1, 2009. 10 A. I don't recall any specific 11 discussion of that. It's -- you know, a lot of 12 what -- you know, we try to consider all of our 13 risks and try to do what we can to limit those 14 risks for our own claims, but I don't remember any 15 specific discussions of that. 16 Q. Since you put it in those terms, how 17 does, if the company does attempt to limit its 18 risks, that certification from an approved 19 attorney would be in error, or at worst, 20 fraudulent? 21 A. Well, we have a -- well, the 22 procedure to put -- before we put somebody on a 23 list is to make sure they are a 24 licensed-in-good-standing member of the Bar and 25 check references, that they have E&O. And then</p>
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<p>1 If it's metes and bounds, it's -- I think it's 2 like 250, plus an hourly rate, depending on how 3 difficult and how time-consuming it is. 4 Q. Okay. So the 250 base fee, plus an 5 hourly rate? 6 A. Right. 7 Q. What does the company charge to do a 8 title certificate? 9 A. The company doesn't do title 10 certificates. It's just title reports. 11 Q. Okay. And is that synonymous with 12 abstract, title report? 13 A. Technically, no. A lot of people 14 just in business use the phrase abstract. I mean, 15 abstract is truly a derainment of title, showing 16 every item of record versus a title report 17 summary. 18 Q. Has any -- to your knowledge, your 19 company knowledge, has the company ever considered 20 employing any measures to check whether or not its 21 approved attorneys' title work meets company 22 standards? 23 MR. JONES: Object to the form. 24 THE WITNESS: Well, have we ever 25 considered it? Was that the question?</p>	<p>1 beyond that, obviously, if we get claims, we keep 2 up with that. If we have any -- just calls from 3 complaints on lenders, people that just deal with 4 agents. 5 I mean, we have such a small Bar, 6 there's -- usually word gets around if there are 7 any problems. We keep up with whatever the Bar 8 publishes on, if there are any disciplinary 9 proceedings. So it's just for our own benefit in 10 trying to keep -- make sure we don't have any 11 claims, sort of summary. 12 Q. Okay. What I'm trying to find out, 13 A, whether the company has ever considered any 14 measures to try to check whether or not its 15 approved attorneys are meeting company standards 16 with the title work they submit, and, B, whether 17 or not the cost of checking, i.e., obtaining 18 abstracts, was considered in that discussion. 19 MR. JONES: Object to the form. 20 MR. LISTON, CONTINUED: 21 Q. Do you have any knowledge -- 22 corporate knowledge on those issues? 23 MR. JONES: Object to the form. 24 THE WITNESS: I don't -- I don't. I 25 don't recall.</p>

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17 (Pages 65 to 68)

Page 65	Page 67
<p>1 Q. As I understand it, he typically did 2 title research for the purpose of certifying title 3 to Valley. You assume he did? 4 A. Well, I don't -- I don't know why he 5 did it. He, in fact, filled out our application 6 and certificate of title. 7 Q. Right. Valley would assume that 8 either he or someone under his control had done 9 some title research to back up that certification, 10 right? 11 A. Yes. 12 Q. Okay. Would hope he had, right? 13 A. Right. 14 Q. And Valley knew before at least the 15 2008 White Oaks loan involving Bank of Forest, 16 that Charles Evans and its other approved 17 attorneys were doing title research, hopefully, to 18 back up their title certifications to Valley? 19 MR. JONES: Object to the form. 20 THE WITNESS: I'm sorry, I didn't 21 follow your question. 22 MR. LISTON, CONTINUED: 23 Q. Yeah. I'm just saying, approved 24 attorneys for eons, Valley has known for eons that 25 approved attorneys are out there doing title</p>	<p>1 ourselves, right. 2 Q. Right. The approved attorney is -- 3 I'm going to use the word "allow," but -- let's 4 not use that word. The approved attorney prepares 5 the applications for title commitments and title 6 policies and sends them to Valley? 7 A. Right. 8 Q. Valley accepts those? 9 A. Well. . . 10 Q. Unless it -- 11 A. Unless it chooses not to. 12 Q. -- chooses not to? 13 A. I mean. . . Yeah. 14 Q. Okay. If there's a need for 15 additional information in order for Valley to 16 issue a commitment or policy, to come from the 17 prospective insured, does Valley communicate with 18 that insured directly, or does it go through the 19 approved attorney to obtain that? 20 A. No, we'd ask their lawyer, the 21 closing attorney. 22 Q. Okay. Who may happen to be the 23 approved attorney? 24 A. Right. 25 Q. Valley, as I understand it, collects</p>
Page 66	Page 68
<p>1 research -- 2 A. Yes. 3 Q. -- for the purpose of certifying 4 title to Valley, right? 5 A. Right. 6 Q. Long before 2008? 7 A. Yes. 8 Q. Okay. Of course, the approved 9 attorneys are allowed to, and Valley expects them 10 to, make title certifications to Valley? 11 MR. JONES: Object to the form. 12 THE WITNESS: Well, they're not -- I 13 mean, saying "allowed" would be saying that we 14 have some control over them. I mean, they -- 15 MR. LISTON, CONTINUED: 16 Q. I'm not asking that. 17 A. Okay. I mean, they fill out 18 applications, and we choose to insure or not based 19 on those applications. 20 Q. Okay. Matter of fact, that's what 21 the approved attorney is for, right? I mean, 22 that's the whole reason the approved attorney 23 exists is so that Valley can have someone to rely 24 on to certify title to it? 25 A. Right. We don't do the search</p>	<p>1 any binder fees and any premium fees from the 2 approved attorney who submitted the application 3 for either the commitment or the policy? 4 A. Typically, yes. 5 Q. Okay. In this case, are you familiar 6 with whether Valley ever billed, sent an invoice, 7 anything, to the Bank of Forest for any fees or 8 premiums? 9 MR. JONES: Object to the form. 10 THE WITNESS: I'm not familiar with 11 it. I believe we send it to their attorney. 12 MR. LISTON, CONTINUED: 13 Q. Okay. Being who, Charles Evans? 14 A. Yes. 15 Q. Now, you said "their attorney." 16 Whose attorney? 17 A. The bank's attorney. 18 Q. How do you know he's the bank's 19 attorney? 20 A. He's the closing attorney. 21 Q. How do you know they hired him? 22 A. Well, he represented -- 23 Q. Are you assuming it? 24 A. Well, he represented he did. I guess 25 he would represent that he did.</p>

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18 (Pages 69 to 72)

Page 69	Page 71
<p>1 Q. Where did Charles Evans represent 2 he -- to Valley that he was representing the Bank 3 of Forest? Have you seen that in writing? 4 A. No, not in writing. Well, he called 5 and asked on their behalf, and that's typically 6 representing the lender and the purchaser. 7 Q. How do you know he wasn't 8 representing a guy named Chris Evans? 9 A. I believe aren't there cases that say 10 that, the ethics rules? 11 Q. Are we going to talk some law? 12 A. Not really. 13 Q. Do you want to talk law? 14 A. Not particularly. 15 Q. I'm just asking you factually. 16 A. Factually, no. 17 Q. You adopted the word "their." I want 18 to find out what your basis is. Do you know for a 19 fact -- 20 A. Oh, no. 21 Q. -- Charles Evans was representing the 22 Bank of Forest? 23 A. No. 24 Q. Okay. And approved attorneys 25 transmit the binder fees and the premiums to</p>	<p>1 of -- it may be premiums that Valley received due 2 to any acts of Charles Evans. And by "acts," I 3 mean applications for commitments or policies. 4 What's that number? 5 A. The -- I don't know the breakdown. 6 The total of commitment fees, title insurance 7 premiums and fees for endorsements, there were 8 some endorsements to policies, it was about 9 195,000 over this course of -- since 2002 to 2009. 10 Q. Is it fair to say -- I know the 11 payout is more than the premium. Mr. Jones 12 pointed that out the other day. 13 A. Slightly. 14 Q. But is it fair to say with every 15 transaction that Charles Evans submitted for 16 approval to Valley, Valley had a financial 17 interest in that transaction? That was a bad 18 question. 19 A. Uh-huh (affirmative response). 20 Q. It was vague. Let me rephrase it. 21 A. Please. 22 Q. Every time Charles Evans did anything 23 on behalf of the Bank of Forest in regards to the 24 2008 or 2009 White Oaks loan, Valley made or stood 25 to make either a binder fee or a premium off that?</p>
Page 70	Page 72
<p>1 Valley, don't they? 2 A. Typically. 3 Q. Okay. And the approved attorneys 4 receive from Valley the title commitments? 5 A. Typically. 6 Q. And deliver them to whoever needs 7 them, correct? 8 A. Typically, yes. 9 Q. And the approved attorneys receive 10 from Valley the title policies, and, again, 11 deliver those to whoever might need them, right? 12 A. Yes, typically. 13 Q. In the typical course of these 14 things, I know there are probably exceptions, but 15 Valley has little to no contact with the insured 16 before the title policy is issued, correct? 17 A. Correct. 18 Q. Okay. So the only person with whom 19 the insured would be in contact, as a conduit for 20 Valley, is going to be that approved attorney? 21 A. Typically. I mean, they're certainly 22 able to call us and ask if they have something -- 23 any questions. 24 Q. Okay. I've heard some number or seen 25 some number in this litigation of the total amount</p>	<p>1 A. Well, anything -- well, if he 2 submitted an application and -- for a title 3 certificate for a commitment, then, yes, we would 4 make a fee off the commitment fee or if he 5 submitted it for a premium -- a policy and we 6 issued the policy, yes, we would make a premium 7 off the policy. 8 Q. And those are the two things he did, 9 right? He submitted applications for commitments 10 for policies -- 11 A. Just in general -- 12 Q. -- that involved the Bank of Forest? 13 A. Well, in 2008, on that loan, yes, on 14 both. On the 2009, he only submitted the first 15 certificate for a commitment. 16 Q. Didn't he submit an application for 17 the policy in 2009, or did it not get that far? 18 A. No, it did not get that far. 19 Q. Okay. That's fine. 20 All right. Let's look at documents. 21 I'm going to get you guys on that side of the 22 table to shuffle through these, if that's okay. 23 Take a look at No. 1, please, sir. 24 A. Okay. 25 Q. This is a brochure -- or a copy of a</p>

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21 (Pages 81 to 84)

Page 81	Page 83
<p>1 A. That statement is on the schedules. 2 And if you read the remainder of the jacket, 3 that's what it insures. 4 Q. Well, I'm sure. It's all about 5 insuring something. But that statement is in 6 there, correct? 7 A. The statement is in there. 8 Q. And it's in writing, right? 9 A. Yes. 10 Q. And who wrote it? 11 MR. JONES: Object to the form. 12 THE WITNESS: It was whoever issued 13 the policy. 14 MR. LISTON, CONTINUED: 15 Q. Who worked for whom? 16 A. On which policy? 17 Q. On any policy that Valley issues. 18 Who wrote that schedule? 19 MR. JONES: Object to the form. 20 THE WITNESS: Either the agents or 21 the company. 22 MR. LISTON, CONTINUED: 23 Q. Okay. Not Charles Evans, right? 24 A. No. 25 Q. Okay. Take a look at Bates No. page</p>	<p>1 A. Since then? 2 Q. Yes. 3 A. A little bit, yes. 4 Q. Tell me how. 5 A. I'm trying to think of how it's 6 different. We changed the certification form, 7 require actual copies of documents now. Do a 8 little -- do additional background search on if 9 somebody wants to become an approved attorney or 10 an agent. I think those are the fundamental 11 changes. 12 Q. Okay. I think y'all -- before 13 September 2009, you didn't charge the approved 14 attorneys a fee to make an application for 15 approved attorney, and now they are charged a fee? 16 A. Right. 17 Q. What other screening criteria do you 18 have that you didn't have then? 19 A. I think that's everything. I think 20 it's just the investigation. With that fee, they 21 go back and run some different independent 22 searches. So. . . 23 Q. Okay. You mentioned that the form of 24 the application and title certification has 25 changed and now attorneys are required to attach</p>
Page 82	Page 84
<p>1 253(a). 2 A. Okay. 3 Q. There's a section there, 1.2, it goes 4 from that page to the next, called "Basic Title 5 Insurance Process." 6 A. Okay. 7 Q. Is this a fair summary of the -- 8 Valley's title insurance process, including those 9 parts of it that reference what an approved 10 attorney does or does not do? 11 A. I haven't read it, so I'd have to 12 read it. 13 Q. Please read it. 14 A. Okay. (Reviews document.) 15 (OFF THE RECORD.) 16 MR. LISTON: Back on. 17 MR. LISTON, CONTINUED: 18 Q. You've read Section 1.2 out of this 19 exhibit? 20 A. Yes. 21 Q. All right. Does 1.2 fairly summarize 22 what Valley's title insurance process was, at 23 least before September 1, 2009? 24 A. Yeah, that's basically. . . 25 Q. Has it changed?</p>	<p>1 documents? 2 A. Right. 3 Q. What kind of documents? 4 A. The vesting deed and the deeds of 5 trust. 6 Q. Okay. So in other words, when an 7 attorney represents to Valley that fee simple 8 title of the property is in a certain party, 9 they're actually required to attach that 10 instrument which shows that fee simple title is in 11 that party, right? 12 A. Right. There would be such a 13 document, yes. 14 Q. Okay. Was it feasible for Valley to 15 have had those measures before 2008? 16 MR. JONES: Object to the form; calls 17 for speculation. 18 THE WITNESS: Yes. 19 MR. LISTON, CONTINUED: 20 Q. Any reason you can tell me why Valley 21 did not have those measures before 2008? 22 A. We've been in business for 70 years. 23 Never been a necessity or a problem or needed it. 24 And so, I mean, there are certainly -- you can 25 forge -- unfortunately, you can forge deeds and</p>

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26 (Pages 101 to 104)

Page 101	Page 103
<p>1 MR. JONES: Object to the form.</p> <p>2 THE WITNESS: I mean, I wouldn't --</p> <p>3 well, yeah, it's -- the general guidelines, yeah.</p> <p>4 MR. LISTON, CONTINUED:</p> <p>5 Q. All right. Guidelines, that's fine.</p> <p>6 2.1, "This form is designed" -- I'm sorry, strike</p> <p>7 it.</p> <p>8 At the top it's entitled, "The</p> <p>9 Application and Attorney's First Certificate."</p> <p>10 And then it says, "This form is designed for use</p> <p>11 in those circumstances where it is -- where it is</p> <p>12 contemplated that a commitment will be required.</p> <p>13 The form is completed by an approved attorney of</p> <p>14 the company, and a commitment to insure is issued</p> <p>15 with certain exceptions and under certain</p> <p>16 conditions. This enables the insured to proceed</p> <p>17 with disbursement of his funds with assurances as</p> <p>18 to the quality of title he is obtaining."</p> <p>19 Okay. You understand that language?</p> <p>20 A. Uh-huh (affirmative response).</p> <p>21 Q. Right?</p> <p>22 A. Uh-huh (affirmative response).</p> <p>23 Q. It's talking about a commitment?</p> <p>24 A. Uh-huh (affirmative response).</p> <p>25 Q. It's talking about an insured</p>	<p>1 Q. I'm going to just try to ask you</p> <p>2 these questions, and you can look at -- I'll</p> <p>3 reference them in my questions. Talking about</p> <p>4 Exhibit 3 to Ms. Freeman's deposition, it is --</p> <p>5 these are two pages of invoices. I don't think</p> <p>6 the Bank of Forest is referenced on either one,</p> <p>7 but one invoice is dated in 2004 and the other in</p> <p>8 2005.</p> <p>9 A. Okay.</p> <p>10 Q. They're directed -- they're from</p> <p>11 Valley to Charles Evans, showing where he's being</p> <p>12 invoiced for what appear to be either premiums or</p> <p>13 binder fees.</p> <p>14 A. Okay.</p> <p>15 Q. Would you agree with me that was the</p> <p>16 typical course of business?</p> <p>17 A. Yes.</p> <p>18 Q. To invoice the approved attorney?</p> <p>19 A. Well, to invoice who requested it,</p> <p>20 yes.</p> <p>21 Q. Right. And it was not typical to</p> <p>22 invoice the insured or prospective insured?</p> <p>23 MR. JONES: Object to the form.</p> <p>24 THE WITNESS: Unless they were the</p> <p>25 ones who requested it.</p>
Page 102	Page 104
<p>1 receiving a commitment and then being able to</p> <p>2 proceed with disbursement of the funds with</p> <p>3 assurance that the quality of the title is good,</p> <p>4 correct?</p> <p>5 MR. JONES: Object to the form.</p> <p>6 MR. LISTON, CONTINUED:</p> <p>7 Q. It doesn't say closing protection</p> <p>8 letter in there anywhere, does it?</p> <p>9 A. That particular sentence, no.</p> <p>10 Q. And this was written by whom?</p> <p>11 A. This is written by MVT to our</p> <p>12 attorneys, who are also agents.</p> <p>13 Q. Okay. Are the schedules to the</p> <p>14 commitments part of the commitment?</p> <p>15 A. Oh, Schedule A and Schedule B?</p> <p>16 Q. Yes.</p> <p>17 A. I mean, it's those, together with the</p> <p>18 jacket, would be the commitment.</p> <p>19 Q. Does MVT recognize that the</p> <p>20 commitments, including their schedules, will be</p> <p>21 provided to the insureds or prospective insureds?</p> <p>22 MR. JONES: Object to the form.</p> <p>23 THE WITNESS: That would be the</p> <p>24 typical process.</p> <p>25 MR. LISTON, CONTINUED:</p>	<p>1 MR. LISTON, CONTINUED:</p> <p>2 Q. Okay. I'm talking about Exhibit 4 to</p> <p>3 Ms. Freeman's deposition now. These are invoices</p> <p>4 that all apply to the Bank of Forest.</p> <p>5 A. Okay.</p> <p>6 Q. And can you confirm for me that the</p> <p>7 first two pages apply to the 2008 White Oaks loan</p> <p>8 and the last page of this exhibit applies to the</p> <p>9 2009 White Oaks loan?</p> <p>10 A. Yeah, appears to.</p> <p>11 Q. Okay. Now, this is -- these are</p> <p>12 bills from Valley to Charles Evans, correct?</p> <p>13 A. Correct.</p> <p>14 Q. Not bills from Valley to Bank of</p> <p>15 Forest?</p> <p>16 MR. JONES: Object to the form.</p> <p>17 THE WITNESS: Correct.</p> <p>18 MR. LISTON, CONTINUED:</p> <p>19 Q. Okay. And down here on these bills</p> <p>20 is a customer number of 2410?</p> <p>21 A. Yes.</p> <p>22 Q. Correct?</p> <p>23 A. Correct.</p> <p>24 Q. That number was assigned by Valley to</p> <p>25 Charles Evans?</p>

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27 (Pages 105 to 108)

Page 105	Page 107
<p>1 A. Yes.</p> <p>2 Q. And hence, Valley considered Charles</p> <p>3 Evans to be its customer in these transactions; is</p> <p>4 that right?</p> <p>5 A. I don't know that we ever have any</p> <p>6 policy about who we consider a customer. He was</p> <p>7 assigned that number since he was the one that</p> <p>8 requested it.</p> <p>9 Q. Was there any customer number or</p> <p>10 other number on these documents that was assigned</p> <p>11 to the Bank of Forest, to your knowledge?</p> <p>12 A. Not to my knowledge.</p> <p>13 Q. I'm looking at Exhibit 5 to</p> <p>14 Ms. Freeman's deposition. These are -- I think</p> <p>15 you've got a three-paged exhibit over there. Is</p> <p>16 that correct?</p> <p>17 A. That's correct.</p> <p>18 Q. Okay. These are apparently cover</p> <p>19 letters of different dates which Valley addressed</p> <p>20 to Charles Evans, and all of them involve the Bank</p> <p>21 of Forest, right?</p> <p>22 A. Yes, appears to be.</p> <p>23 Q. And you know, we -- they speak for</p> <p>24 themselves, to the extent I've ever heard a</p> <p>25 document say anything. But they talk about</p>	<p>1 MR. JONES: Object to the form.</p> <p>2 MR. LISTON, CONTINUED:</p> <p>3 Q. Okay. I'm talk- -- I'm looking at</p> <p>4 Exhibit 6 to Ms. Freeman's deposition, which says</p> <p>5 it's the "Application and Attorney's First</p> <p>6 Certificate."</p> <p>7 A. Okay.</p> <p>8 Q. Can you confirm that this document</p> <p>9 applies to the 2009 White Oaks loan involving Bank</p> <p>10 of Forest?</p> <p>11 A. It appears to.</p> <p>12 Q. Okay. Did Charles Evans fill out</p> <p>13 these -- this document?</p> <p>14 A. It appears he did.</p> <p>15 Q. Okay. And he's certified title down</p> <p>16 to a certain date of August 26, 2009?</p> <p>17 A. Yeah, that was the certification</p> <p>18 date.</p> <p>19 Q. And then he attached at least two</p> <p>20 exhibits to it, correct?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. And those are property</p> <p>23 descriptions and exceptions, it looks like?</p> <p>24 A. Yes.</p> <p>25 MR. JONES: Object to the form on</p>
Page 106	Page 108
<p>1 commitments and/or policies being delivered or</p> <p>2 transmitted from Valley to Charles Evans?</p> <p>3 A. Right.</p> <p>4 Q. Right?</p> <p>5 A. Uh-huh (affirmative response).</p> <p>6 Q. Which is the typical course of</p> <p>7 business, correct?</p> <p>8 A. Yeah.</p> <p>9 Q. Now, these letters also reflect that</p> <p>10 Valley is waiting to receive a check from Charles</p> <p>11 Evans before it issues the title insurance</p> <p>12 policies, correct?</p> <p>13 MR. JONES: Object to the form.</p> <p>14 THE WITNESS: Yeah, it says "your</p> <p>15 check."</p> <p>16 MR. LISTON, CONTINUED:</p> <p>17 Q. Right. And they are addressed to</p> <p>18 Charles Evans?</p> <p>19 A. Right.</p> <p>20 Q. All right.</p> <p>21 A. I mean, I don't think we would turn</p> <p>22 it down if it's made from someone else.</p> <p>23 Q. Sure. But Valley didn't send any</p> <p>24 letters to the Bank of Forest requesting payment?</p> <p>25 A. Right.</p>	<p>1 that. Exactly two exhibits. It's not at least</p> <p>2 two.</p> <p>3 MR. LISTON: Oh, yeah.</p> <p>4 MR. LISTON, CONTINUED:</p> <p>5 Q. Two exhibits, A and B, right?</p> <p>6 A. Right.</p> <p>7 Q. Okay. To your knowledge, speaking on</p> <p>8 behalf of Valley, is this a complete copy of the</p> <p>9 application and attorney's first certificate</p> <p>10 applying to the 2009 White Oaks loan?</p> <p>11 A. As far as I know.</p> <p>12 Q. Okay. Let's look at Exhibit 7 to</p> <p>13 Ms. Freeman's deposition.</p> <p>14 A. Okay.</p> <p>15 Q. Is this a -- look through it now,</p> <p>16 from the front to back. Is this a true and</p> <p>17 correct copy of the commitment for title insurance</p> <p>18 issued by Valley pertinent to the 2009 White Oaks</p> <p>19 loan involving the Bank of Forest?</p> <p>20 A. Appears to be.</p> <p>21 Q. Okay. Now, this document has two</p> <p>22 form pages after the title page that are</p> <p>23 preprinted form pages that Valley uses on</p> <p>24 commitments, as I understand it.</p> <p>25 A. Let me clarify your statement.</p>

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28 (Pages 109 to 112)

Page 109	Page 111
<p>1 Q. Please do.</p> <p>2 A. The page you're looking at is the</p> <p>3 first page. The first page on there is actually</p> <p>4 the back.</p> <p>5 Q. This is like a folded thing?</p> <p>6 A. Yes, it is.</p> <p>7 Q. This is the jacket?</p> <p>8 A. Right.</p> <p>9 Q. On the front that says "Commitment</p> <p>10 For Title Insurance"?</p> <p>11 A. Right. And it's on the backside.</p> <p>12 Q. Okay. That's fine. And then the</p> <p>13 second page of the exhibit is the first page of</p> <p>14 the commitment?</p> <p>15 A. Right, yeah.</p> <p>16 Q. Okay. And the first page of the</p> <p>17 commitment and the second page are preprinted</p> <p>18 forms that Valley uses for its commitments,</p> <p>19 correct?</p> <p>20 A. Yes.</p> <p>21 MR. JONES: Object to the form.</p> <p>22 MR. LISTON, CONTINUED:</p> <p>23 Q. Are there any other forms that Valley</p> <p>24 uses for commitments, or is this it?</p> <p>25 A. I mean, that's the -- that's the</p>	<p>1 A. Yes.</p> <p>2 Q. Valley knew, or at least thought,</p> <p>3 that this commitment, including its schedule,</p> <p>4 would be supplied to the Bank of Forest, right?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And it has an effective date</p> <p>7 of August 26, 2009, on it, correct?</p> <p>8 A. Right.</p> <p>9 Q. All right. Up at the top, it</p> <p>10 references Charles Evans, Jr. as an agent with</p> <p>11 that six-digit number?</p> <p>12 A. Right.</p> <p>13 Q. Right?</p> <p>14 A. Uh-huh (affirmative response).</p> <p>15 Q. Now, you know this because you may</p> <p>16 have been in the room, there's another commitment</p> <p>17 involved in the Bank of Forest case?</p> <p>18 A. Yes.</p> <p>19 Q. Same looking form?</p> <p>20 A. Right.</p> <p>21 Q. But it doesn't say agent number</p> <p>22 there?</p> <p>23 A. Right.</p> <p>24 Q. It says MVT number?</p> <p>25 A. Right.</p>
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<p>1 version we've used since it was rewritten in 2006.</p> <p>2 Q. Okay.</p> <p>3 MR. JONES: I just object to the</p> <p>4 form. The countersigned signature is not</p> <p>5 preprinted, just for clarification.</p> <p>6 MR. LISTON: Oh, I've got you.</p> <p>7 THE WITNESS: Oh, sorry. Yeah.</p> <p>8 MR. LISTON, CONTINUED:</p> <p>9 Q. Ms. Freeman signed it?</p> <p>10 A. Yeah, that would be an original</p> <p>11 signature.</p> <p>12 Q. Okay. Are the other signatures</p> <p>13 proximate to hers presigned?</p> <p>14 A. Yeah. They're part of the preprinted</p> <p>15 form.</p> <p>16 Q. Okay. Look at the Schedule A,</p> <p>17 please, sir.</p> <p>18 A. Okay.</p> <p>19 Q. Okay. Schedule A is prepared by</p> <p>20 Valley, as I understand it, right?</p> <p>21 A. This one -- this Schedule A?</p> <p>22 Q. Yes.</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And it was prepared by Valley</p> <p>25 for issuance to Charles Evans, correct?</p>	<p>1 Q. Can you explain to me why we have</p> <p>2 "agent" on one form and "MVT" on another?</p> <p>3 A. Yes.</p> <p>4 Q. Why?</p> <p>5 A. I went back and looked at the</p> <p>6 software, and of that summer of 2009, there was an</p> <p>7 update that overwrote that field, and it overwrote</p> <p>8 it with agent number rather than MVT number. And</p> <p>9 so it wasn't realized that it was -- it says</p> <p>10 "agent."</p> <p>11 Q. Who did that? Who changed the</p> <p>12 software between the 2008 and 2009 commitment?</p> <p>13 A. It's the version of the software that</p> <p>14 went out. I mean, it was MVT software, if that's</p> <p>15 what you mean.</p> <p>16 Q. Was there an in-house IT guy at</p> <p>17 Valley that did that to the software, or is it</p> <p>18 just a new version that came from outside Valley?</p> <p>19 A. It's a new version from an</p> <p>20 independent company.</p> <p>21 Q. Okay. From which company?</p> <p>22 A. I can't remember what his name is. I</p> <p>23 mean, the software is Valley, right. So, I mean,</p> <p>24 I don't know if we technically own the source --</p> <p>25 source code or not, but it's issued to agents so</p>

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29 (Pages 113 to 116)

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<p>1 that they can issue commitments and policies. 2 Q. Okay. Well, what I'm trying to find 3 out is who is the contractor that provides that 4 software to Valley? 5 A. Oh. Brandon Manley. 6 Q. Manning? 7 A. Manley. 8 Q. Where does Mr. Manley live? 9 A. Madison. Gluckstadt. 10 Q. Okay. You don't happen to know his 11 address and telephone number, do you? 12 A. Sorry, no. 13 Q. Does he have a business, or does he 14 just do business in his own name? 15 A. He's -- I'm not sure if he does it in 16 his own name or not. He was our independent 17 contractor to write the software. And since it 18 primarily goes out to agents, it was -- just the 19 default field says "agent." 20 Q. M-a-n-l-e-y? 21 A. Yes. 22 Q. You said you checked into that, and 23 you have determined there was a software upgrade? 24 A. Yeah. 25 Q. Or rewrite. What did you do to check</p>	<p>1 A. I'm not going to call it a 2 representation. 3 Q. But you'll agree it's a written 4 statement? 5 A. I'll agree it's a written statement. 6 Q. All right. I'll -- you know, 7 whatever you want to do. I'll say statement, if 8 that's okay. 9 A. Okay. 10 Q. You've come to learn now that this 11 statement is false? 12 MR. JONES: Object to the form. 13 THE WITNESS: Speaking as of the time 14 of the commitment? 15 MR. LISTON, CONTINUED: 16 Q. No. The question was now. 17 A. Oh, right now? 18 Q. You know, as you sit here today 19 speaking on behalf of Valley, that the statement 20 on No. 4 is false? 21 A. I'm sorry, you didn't understand my 22 question. 23 Q. What? 24 A. That the statement as of this was 25 incorrect, because I'm not sure <u>exactly</u> who has</p>
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<p>1 into it? 2 A. I asked Bonnie Woods when the update 3 went out and -- because I looked at those and 4 questioned why it did that. So. . . 5 Q. Did you see any documentation 6 pertinent to that software change, or was this 7 just verbal information you obtained from 8 Ms. Woods? 9 A. Just verbal. Just verbal. 10 Q. Okay. When did you check on that? 11 A. A couple of days ago. 12 Q. Okay. Now, look down here, please, 13 sir, at paragraph No. 4. 14 A. Okay. 15 Q. On Schedule A of Exhibit No. 7. This 16 is a written statement, is it not, made by Valley 17 that fee simple estate or interest in the land is 18 at the effective date vested in G&B Investments? 19 MR. JONES: Object to the form. 20 THE WITNESS: Yes. 21 MR. LISTON, CONTINUED: 22 Q. Okay. Now, you have come to learn 23 now that this statement -- I'll call it a 24 representation. I know you're not going to call 25 it that, are you?</p>	<p>1 title with all of the bankruptcy proceedings and 2 all now. 3 Q. I see what you mean. 4 A. Yeah. 5 Q. Okay. All right. Well, you came to 6 learn in September of 2009 that the statement made 7 in No. 4 is false? 8 A. Right. Yes. 9 Q. Okay. Now, based on what you've been 10 able to determine with Valley, did any employee of 11 Valley know this statement was false at the time 12 it was made? 13 A. No. 14 Q. Okay. Did any employee of Valley 15 know whether or not the statement was, in fact, 16 true at the time it was made? 17 A. No. It's all based on his 18 certificate. 19 Q. So this statement was put in this 20 document by Valley without knowledge of whether or 21 not the statement was true or false? 22 MR. JONES: Object to the form. 23 MR. LISTON, CONTINUED: 24 Q. Is that correct? 25 A. Correct.</p>

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30 (Pages 117 to 120)

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<p>1 Q. Are the insureds, in particular the 2 Bank of Forest -- was the Bank of Forest ever 3 told, to your knowledge, what Valley's procedures 4 were with regard to simply adopting the statements 5 made in title certifications by an approved 6 attorney? 7 A. I don't know that they were told 8 anything one way or the other. 9 Q. Okay. In other words, is there any 10 information you can cite, whether it was 11 documented or given orally to the Bank of Forest, 12 whereby the Bank of Forest was informed that 13 Valley, including its employees, is not making an 14 independent determination as to the quality of 15 this title? 16 MR. JONES: Object to the form. 17 THE WITNESS: Nothing other than the 18 fact the commitment says it's not a status of 19 title. 20 MR. LISTON, CONTINUED: 21 Q. Where does it say that? 22 A. No. 4 on -- it's not Bates labelled. 23 "This commitment is a contract to issue one or 24 more title insurance policies and is not an 25 abstract of title or a report of the condition of</p>	<p>1 owner of the property is? 2 MR. JONES: Object to the form. 3 THE WITNESS: They weren't told 4 either way. 5 MR. JONES: Let's take a break. 6 (OFF THE RECORD.) 7 MR. LISTON, CONTINUED: 8 Q. Look at Exhibit 8. I think the only 9 thing I want to ask you about this is whether this 10 is a true and correct and complete copy of the 11 application and attorney's first certificate 12 pertinent to the 2008 White Oaks loan involving 13 Bank of Forest? 14 A. It appears to be. 15 Q. Okay. 16 MR. JONES: Now, wasn't there -- 17 isn't there two parcels on -- I thought that 18 was -- 19 THE WITNESS: Oh, there are -- there 20 are two parcels on a revised commitment. There 21 are three versions of a commitment in there. I 22 don't think he ever changed -- 23 MR. LISTON, CONTINUED: 24 Q. On 2008? 25 A. Yeah.</p>
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<p>1 title." 2 Q. Okay. And then it goes on to say 3 what? 4 A. Do you want me to read it? 5 Q. Yes, sir. 6 A. "Any action or actions or rights of 7 action that the proposed insured may have or may 8 bring against the company arising out of the 9 status of title to the estate or interest of the 10 status of the mortgage thereon covered by the 11 commitment must be based on and are subject to the 12 provisions of this commitment." 13 Q. Okay. So any complaint the bank may 14 have must be based on this commitment, right? 15 A. Right. 16 Q. What's in the commitment? The fact 17 that G&B Investments owns the property, right? 18 MR. JONES: Object to the form. 19 THE WITNESS: Right. 20 MR. JONES: The commitment speaks for 21 itself. 22 MR. LISTON, CONTINUED: 23 Q. Was the bank ever informed, to your 24 knowledge, about how Valley determined for 25 purposes of putting it in a commitment who the</p>	<p>1 Q. I'm fixing to look at that 2 commitment. 3 A. I don't think he ever submitted 4 another certificate that showed both of them. 5 Q. Okay. Well, let's just look at -- 6 look at Exhibit 9 to Ms. Freeman's. 7 A. Okay. 8 Q. Is this a true and correct copy of 9 the title commitment pertinent to the 2008 White 10 Oaks loan? If it's missing something, tell me 11 what it is. 12 MR. JONES: Back cover. 13 THE WITNESS: No, it's -- oh, yeah, 14 it is missing the back cover. 15 COURT REPORTER: I can't hear. With 16 the background distraction, I can't hear entirely 17 what you are saying. 18 MR. JONES: Hey, the court reporter 19 can't hear. 20 THE WITNESS: It appears a true and 21 correct copy, but it's missing the back cover. 22 MR. LISTON, CONTINUED: 23 Q. Now, let's look at Exhibit No. 10 of 24 Ms. Freeman's. 25 A. Okay.</p>

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35 (Pages 137 to 140)

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<p>1 as just purely claims investigation, I helped with 2 investigating the title. So, I mean, does that 3 answer your question? 4 Q. That answered my question. 5 Some of the information that he put 6 in here -- 7 A. Right. 8 Q. -- may have been required due to your 9 efforts in claims investigation? 10 A. Correct. 11 Q. Okay. All right. You didn't -- did 12 you proofread this for him at any time before he 13 sent it to counsel? Were you aware he was sending 14 the affidavit to counsel? That's what I'm trying 15 to find out. 16 MR. JONES: Object to the form as to 17 whether he's aware if he was sending it to 18 counsel. 19 THE WITNESS: I was aware counsel was 20 retained and working on it. 21 MR. LISTON, CONTINUED: 22 Q. Okay. 23 A. So. . . 24 Q. Well, have you reviewed this since he 25 signed it?</p>	<p>1 loan was fraudulent? 2 MR. JONES: Object to the form. 3 You can answer to the extent you 4 know. 5 THE WITNESS: It was wrong whether it 6 was fraud -- you know, I guess that goes to his 7 intent, and so. . . 8 MR. LISTON, CONTINUED: 9 Q. It was -- it was a misrepresentation. 10 Is that a better word? 11 A. Yeah. 12 Q. Valley agrees that he made a 13 misrepresentation in those regards? 14 MR. JONES: Object. You said "it." 15 What are you referring to as "it"? 16 MR. LISTON, CONTINUED: 17 Q. At least the 2009 White Oaks 18 certification, you would agree that was a 19 misrepresentation by Evans? 20 MR. JONES: The application and 21 certification from Charles Evans to -- 22 MR. LISTON, CONTINUED: 23 Q. The application. 24 A. Yes. Well, I'm sorry, can you -- 25 Q. Sure. Let me --</p>
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<p>1 A. I don't recall specifically reading 2 through it, I mean, this specific document. 3 Q. You're here today to talk on behalf 4 of Valley? 5 A. Right. 6 Q. I'm going to go through here and 7 substantively ask you some questions. 8 A. Okay. 9 Q. Okay. Look at Paragraph No. 3 in 10 Exhibit 2. This is Exhibit 2, right? 11 A. Yes. 12 Q. Okay. Paragraph No. 3 -- and if we 13 disagree about what it says, we can quote it, but 14 I'll try not to do that. 15 Paragraph No. 3 says, essentially, 16 that Valley has filed a lawsuit against Jon 17 Christopher Evans and Charles Evans alleging they 18 engaged in fraudulent or intentional negligent 19 conduct to the detriment of both Valley and its 20 lender -- and the lenders, right? 21 A. Yes. 22 Q. Okay. Does Valley agree that Charles 23 Evans' conduct, at least with regard to the Bank 24 of Forest, and some of the certifications -- or 25 the certification he gave on the 2009 White Oaks</p>	<p>1 A. It's getting confusing. 2 Q. Yeah, we're going back and forth. 3 Let me state this the way I need to. 4 Does Valley agree that in the 2009 5 White Oaks loan application for the commitment, 6 that Evans provided to Valley, that it contained 7 misrepresentation about who the fee simple owner 8 of the property was? 9 MR. JONES: Object to the form to the 10 extent it calls for saying a commitment is a 11 representation. 12 THE WITNESS: Yes. 13 MR. LISTON, CONTINUED: 14 Q. And Valley filed a suit against Evans 15 alleging that he had engaged in fraudulent conduct 16 as referenced by this paragraph, right? 17 A. Yes. 18 Q. So consequently, Valley must have had 19 a good faith belief of that fact before it filed 20 this, correct? 21 A. Yes. 22 Q. Paragraph No. 8 of this affidavit 23 reflects that Valley relied on title certificates 24 provided by Charles Evans to issue over a hundred 25 title insurance policies to various lenders,</p>

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36 (Pages 141 to 144)

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<p>1 right?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Do all of those contain</p> <p>4 misrepresentations?</p> <p>5 A. No.</p> <p>6 Q. How many of them do? If you know.</p> <p>7 A. I think it was about 30 or 40.</p> <p>8 Q. In none of those instances, as I</p> <p>9 understand your testimony, did Valley check behind</p> <p>10 Charles Evans' certifications to see if, in fact,</p> <p>11 they were accurate?</p> <p>12 A. At the time the commitments or</p> <p>13 policies were issued?</p> <p>14 Q. Right.</p> <p>15 A. No.</p> <p>16 Q. No. 9 says, "Charles Evans</p> <p>17 misrepresented the true ownership of and</p> <p>18 encumbrances upon certain land and title</p> <p>19 certificates provided to Valley for the benefit of</p> <p>20 Jon Evans or entities who borrowed funds from</p> <p>21 lenders," right?</p> <p>22 A. Yes.</p> <p>23 Q. Was that the typical modus operandi</p> <p>24 that Valley discerned from what Charles Evans was</p> <p>25 doing?</p>	<p>1 insurance commitments issued by Mississippi Valley</p> <p>2 Title, lenders would advance funds to Jon</p> <p>3 Christopher Evans, Charles H. Evans, Jr. and/or</p> <p>4 others." Is that correct?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Now, you -- Mr. Brad Jones,</p> <p>7 who works with Valley, cited two things that</p> <p>8 lender would base an advancement of funds on</p> <p>9 there, right?</p> <p>10 A. (Nods head affirmatively.)</p> <p>11 Q. One are title certificates provided</p> <p>12 by Charles Evans, correct?</p> <p>13 A. Right.</p> <p>14 Q. And the other are title commitments</p> <p>15 issued by Valley, correct?</p> <p>16 A. Right.</p> <p>17 Q. With regard to the 2009 White Oaks</p> <p>18 loan, did Charles Evans ever give Bank of Forest,</p> <p>19 to your knowledge, a title certificate?</p> <p>20 A. I don't know.</p> <p>21 Q. You don't know of him ever giving</p> <p>22 one?</p> <p>23 A. I don't know either way. I mean, I</p> <p>24 know nothing on that.</p> <p>25 Q. Do you know whether or not the only</p>
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<p>1 MR. JONES: Object to the form.</p> <p>2 You can answer.</p> <p>3 THE WITNESS: It appears to be, yes.</p> <p>4 MR. LISTON, CONTINUED:</p> <p>5 Q. i.e., that he was either</p> <p>6 misrepresenting ownership of property or</p> <p>7 misrepresenting encumbrances on property?</p> <p>8 A. Yes.</p> <p>9 Q. No. 10 says, "Each of the business</p> <p>10 entities obtaining loans based on these title</p> <p>11 insurance policies and to whom loan proceeds were</p> <p>12 disbursed was owned and/or controlled by Jon</p> <p>13 Christopher Evans and/or Charles Evans and/or</p> <p>14 participated in the common scheme and enterprise</p> <p>15 of Jon Christopher Evans and Charles Evans."</p> <p>16 Obviously, Valley believes that or it</p> <p>17 wouldn't -- Mr. Brad Jones wouldn't have put it in</p> <p>18 his affidavit, correct?</p> <p>19 A. Yeah. It was either believed or</p> <p>20 suspected.</p> <p>21 Q. Okay.</p> <p>22 A. At this point, obviously.</p> <p>23 Q. Look at paragraph 13, please, sir.</p> <p>24 It says, "Based on the false title certificates</p> <p>25 provided by Charles H. Evans, Jr. and title</p>	<p>1 indication of who owned the title to the Bank of</p> <p>2 Forest with regard to the 2009 White Oaks</p> <p>3 transaction was the title commitment that came</p> <p>4 from Valley?</p> <p>5 MR. JONES: Object to the form.</p> <p>6 THE WITNESS: I don't know.</p> <p>7 MR. LISTON, CONTINUED:</p> <p>8 Q. Do you agree or disagree with what</p> <p>9 Mr. Jones said in paragraph 13 of this affidavit?</p> <p>10 A. I don't agree with the way it's</p> <p>11 written.</p> <p>12 Q. Did you have an opportunity to review</p> <p>13 this before this document was apparently filed in</p> <p>14 connection with something, since it bears a filing</p> <p>15 mark at the top?</p> <p>16 A. I don't believe so.</p> <p>17 Q. Okay. Look at the next page of the</p> <p>18 affidavit, please, sir. I'm going to try to</p> <p>19 summarize this. Now, if you want to read it</p> <p>20 before you answer the question, that's fine.</p> <p>21 Okay.</p> <p>22 A. Okay.</p> <p>23 Q. This part that starts on the next</p> <p>24 page with Lot 1G has got subparagraphs C through N</p> <p>25 under it.</p>